



Personnel Accounting: A Legal Framework



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Outline



- Purpose
- The Law
- History
- Current Legislation And Cases
- Critical Definition
- Juxtaposition
- Bracketing
- Conclusion



The Law

- **Missing Service Personnel Act of 1995, 10 U.S.C. §§1501 Et Seq., (MSPA) (Title 10, Chapter 76, Missing Persons)**
- **Missing Persons Act, 37 U.S.C. §§551 Et Seq., (MPA) (Title 37, Chapter 10, Payments to Missing Persons)**



History—Early Legislation And Cases

- “First” Missing Persons Act, March 2, 1799 (1 Stat. 709)—Navy
- Mar 30, 1814 (3 Stat. 113)—Army
- Missing Persons Act, Mar 7, 1942 (50 U.S.C. §§1001 Et Seq.)



Current Legislation **And Cases**



- **Current Missing Persons Act, Sep 6, 1966 (37 U.S.C. §§551 Et Seq.)**
- **“Title 37”**
- **Pay and Allowances**
- **McDonald V. Lucas, 371 F.Supp. 831 (S.D. N.Y. 1974)**
- **Townsend V. Carter, 476 F.Supp. 1070 (N.D. TX 1979)**



The Missing Service Personnel Act



- Feb 10, 1996 (10 U.S.C. §§1501 Et Seq.)
- “Title 10”
- Status





Critical Definition

- **Para E2.1.10, DoD Instruction 2310.5.**
- **“Hostile Action”**
- **“Acts of opposing force...resulting in the involuntary absence of covered persons while engaged in an operational environment, or while going to or returning therefrom.”**



Juxtaposition

- **Title 37—Non-Hostile Action; emphasis on pay and allowances**
- **Entitlement to pay and allowances ends—Evidence §552, PFOD §555, or Title 10**
- **§555—does not apply when Title 10 applies**
- **Title 10—Hostile Action; emphasis on status**



Bracketing



- **Operation ALLIED FORCE**
- **Three US soldiers missing**
- **POWs held by Serbs**
- **Seen on television**
- **Serb Government admitted to holding**
- **Did Title 10 Apply?**





USS COLE



- **Bombing of USS COLE—Yemen**
- **Sailors unaccounted for**
- **Unaccounted for in ship**
- **Title 10 did not apply**
- **Rationale: Sailors not “missing”**
- **Other: Criminals? GCs don’t apply?**
Hostile action? Operational environment?





Attack On Pentagon



- **Sep 11, 2001—Airplane crashed into Pentagon**
- **DoD personnel unaccounted for**
- **Title 10 did not apply**
- **Rationale: Not hostile action, not operational environment**
- **Missing?—USS COLE**
- **Criminals?—No GC protections**





Operation ENDURING FREEDOM



- **Afghanistan**
- **Title 10 applies**
- **Hostile action**
- **Operational environment**
- **International armed conflict—
GCs apply**



Bracketing

Title 37

**Gray
Area**

Title 10

Pentagon/USS COLE

**Operations ALLIED
FORCE/ENDURING
FREEDOM**



**Spotting
Line**



Conclusion

- **Applicability Of Titles 37/10 being bracketed, but no cookie cutter answers**
- **Policy concerns will play a role**
- **Answers to hard questions will come from DoD General Counsel**